IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12155 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

M/S THAKOR PETRO CHEM PVT LTD - Petitioner(s)
Versus
THE STATE OF GUJARAT & 1 - Respondent(s)

==========

Appearance :
MR HR PRAJAPATI for Petitioner(s) : 1,
MR HEMANG PARIKH A.G.P. for Respondent(s) : 1-2,

==========

CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 16/07/2007

ORAL JUDGMENT

1. **RULE**. Mr. Hemang Parikh learned A.G.P., waives service of rule on behalf of the respondents. With the consent of the parties, the matter is taken up for final hearing today itself.

2. The petitioner's sole grievance is that his appeal filed under Rule 154 of the Petroleum Rules, 2002, has been dismissed by respondent no. 1 on the ground of delay, by order dated 7th April, 2007, without affording to him any opportunity of hearing. It is the say of the petitioner that the appeal was not only preferred against the order dated 22nd December, 2006, but it was also directed against the order passed below his application for review by the District Magistrate i.e, respondent no. 2 dated 7th March, 2007. Hence the appeal was within the period of limitation.

3. I have heard Mr. Prajapati learned advocate for the petitioner and Mr. Hemang Parikh learned A.G.P., for the respondents. I have also perused the record of this petition. Order dated 7th March, 2007 clearly shows that the appeal preferred by the petitioner has been dismissed on the ground that it was late by 37 days. The order does not indicate whether the petitioner was personally heard before passing it. Further, respondent no. 1 has kept in view the order dated 22nd December, 2006 alone and has observed that the petitioner has not offered any explanation why delay of 37 days was caused in filing the appeal. However, respondent no. 1 has not taken any notice of order dated 7th March, 2007. Assuming that in

challenging the order dated 22nd December, 2006, there was delay and the petitioner had not filed the appeal within the prescribed period of limitation, it appears that since the petitioner had submitted an application requesting respondent no. 2 to review the order dated 22nd December, 2006, he was justified in not preferring the appeal against the said order. In the process there is delay of 37 days caused. In view of the same, it clearly appears that the delay has been sufficiently explained by the petitioner. It is, therefore, required to be condoned and it is hereby condoned. The impugned order dated 7th March, 2007 is quashed and set aside. The proceedings are remitted to respondent no. 1 for his consideration on merits. Respondent no. 1 shall grant adequate opportunity of personal hearing to the petitioner before taking any decision in appeal. The date of hearing shall be intimated to the petitioner at least one week in advance. The decision that may be taken by respondent no. 1 in appeal be intimated to the petitioner within 15 days from the date of the decision. The exercise to be completed on or before 30th November, 2007.

4. The petition is, therefore, partly allowed. Rule is made absolute to the aforesaid extent.

[Akshay H. Mehta, J.]

/phalguni/